IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3444 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDBHAI NARANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3444 of 1990

MR BD KARIA for Petitioner No. 1

Ms. Falguni Patel, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 07/08/2003

ORAL JUDGEMENT

The present Special Civil Application is filed under Article 227 of the Constitution of India, praying for quashing and setting aside the order passed by the Collector, Junagadh, on 30.12.1989 as well as the order assed by the Additional Chief Secretary (Appeals) on

23.3.1990 in Revision Application No. 3/90 filed by the present petitioner against the order of the Collector.

2. It is the case of the petitioner that the petitioner had entered into an agreement dated 31st March 1971, under which he agreed to purchase agricultural lands bearing Survey No. 128, admeasuring about 4 A - 20 Gs. known as "Fulwadi", from the heirs of Saleh Bin Mamad Hindi, situate at Village Vanarvad, District-Junagadh. The petitioner had paid Rs. 9,000/= and got the possession of the said land. The petitioner has been cultivating the said land since then. It is the further case of petitioner that Saleh Bin Hindi, who was the original owner of the disputed agricultural land was Girasdar of two villages, namely, Handla and Vanarwad under Inamik Giras granted to him by the then Nawab of Junagadh under Order No. Land-I-C-3393 dated February 2, 1899. It is further stated that Vanarwad was Barkhali Village and therefore Saleh Bin Hindi was Barkhalidar of the then Nawab of Junagadh. It is further submitted that administrator was appointed in the year 1947 by Regional Commissioner, Rajkot under his order dated December 6, 1947 for management in respect of village Handla and thereafter on 1st June 1948 Executive Council was appointed to administer the affairs of Junagadh District. It is further stated that on January 8, 1949, Chief Secretary to the Government of Junagadh ordered to resume village Handla and thereafter on January 20, 1949, erstwhile princely State of Junagadh came to be merged with the then State of Saurashtra. On the basis of these facts, it was contended that the original-owner of the land in question was Girasdar and/or Barkhalidar of village Vanarwad and all the agricultural lands of village Vanarwad were in the exclusive ownership and possession of the said Saleh Bin Hindi in view of grant of erstwhile Nawab of Junagadh. It is further stated that Saurashtra Bankhali Abolition Act, 1951 was made applicable in the year 1951 to Junagadh District among others and pursuant to Section 15 of the said Act, Saleh Bin Hindi was rendered to be an occupant in respect of the lands in his possession, and by virtue of that he could sell, mortgage or transfer the land of his occupation, or he could be considered to be Girasdar and his position was to be that of an occupant in respect of the land in question in accordance with the provisions of Saurashtra Land Reforms Act, 1951. It is, therefore, submitted that in view of this peculiar fact, the New Tenure could not be made applicable to the land bearing Survey No. 128 as the New Tenure was made applicable in the State of Gujarat in the year 1961.

3. It is further averred in the petition that despite the aforesaid factual position, a show cause notice dated 3.6.1989/11.7.1989 was issued on the petitioner to show cause why the agricultural land bearing Survey No. 128 being of New Tenure should not be confiscated to the State as the said land was sold to the petitioner without prior permission of the State Government. The petitioner had given his detailed reply vide letter dated 5th September 1989 raising various alternative contentions. However, without considering the said reply and the contentions raised therein, the Collector, Junagadh has passed the impugned order on 30th December 1989 in which he has proceeded on the premises that the land was given to Saleh Bin Hindi on 26.2.1969 and the legal heir of the said Saleh Bin Hindi had transferred the said land by agreement of sale in favour of the present petitioner. The Collector has, therefore, passed the order holding that the possession of the disputed land should be handed over to Mamlatdar, Bhasan and the Mamlatdar was directed to see that there should not be any encroachment on the said land.

4. Being aggrieved by the said order of the Mamlatdar, the petitioner has filed a revision application before the Additional Chief Secretary (Appeals) raising various points which are mentioned in the revision application attached with the petition at Annexure "D". The Additional Chief Secretary (Appeals) has also proceeded more or less on the same footing, and without considering the contentions raised in the revision application as well in the reply filed by the petitioner, had held that the Collector had taken the correct view vide his order dated 30.12.1989 and rejected the revision application and thereby he has confirmed the order passed by the Collector.

5. It is this order which is under challenge in this petition under Article 227 of the Constitution of India.

6. This Court has issued the Rule on 25.4.1990 and also granted ad-interim relief in terms of Para 22 (c) of the petition. By virtue of the interim relief, the petitioner is in possession of the land bearing Survey No. 128 "Fulwadi" at Village Vanarvad, Taluka Bhasan, District Junagadh. Thereafter, this petition came up for hearing before this Court on 1.7.2003 when this Court (Coram: NG Nandi, J.) had directed the Respondents to file affidavit-in-reply within a period of two weeks from that day. However, no affidavit-in-reply is filed on behalf of the respondent State and hence the matter is taken up for Final Hearing in absence of any

affidavit-in-reply.

7. Mr. BD Karia, learned advocate appearing on behalf of the petitioner, submits that both the authorities below had decided the matter without considering the facts and submissions made by the petitioner and hence this Court should interfere in the matter and grant the relief as prayed for in the petition. Mr. Karia has further submitted that the impugned orders and judgments are not in accordance with law and are inconsistent with the pleadings and proved facts on record. He has further submitted that both the authorities have committed a grave error of law in treating the land in question as of new Tenure. As a matter of fact, the New Tenure was made applicable to the State of Gujarat in the year 1961. He has further submitted that strictly in legal parlance, there was no sale in respect of the land in question. It was merely an agreement to sell and as per Section 54 of the Transfer of Property Act, "sale" means any transfer of ownership in exchange of price paid promised. He has further submitted that the petitioner was bonafide proposed purchaser. More over, the petitioner possessed the said land since 1971 and the proceedings of New Tenure land were initiated after about 19 years. He has, therefore, submitted that proceedings cannot be initiated after such a long period. Mr. Karia has further submitted that Sec. 73-A of the Bombay Land Revenue Code is not applicable as the scheme and the scope of New Tenure is meant for the protection of the cultivators and to see that land may not go in the hands of non-cultivators and money-lenders. Here, the petitioner himself is the cultivator. Mr. Karia has alternatively submitted that the Respondent authorities be directed to grant the land to the petitioner by regularising it on recovery of penalty or legal amount which may be payable under the law.

8. Ms. Falguni Patel, learned AGP appearing for the respondents submits that the petitioner has not followed any procedure as required under Section 6 of The Saurashtra Land Reforms Act, 1951. She has further submitted that there is nothing on record to show that the land was given to the petitioner by the then Nawab of Junagadh on 28.2.1899. She has further submitted that as per the orders passed by the authorities below the land was allotted to the legal heirs of Saleh Bin Hindi only on 26.2.1989 and Satakhat was executed on 31.3.1971, and since the transaction has taken place after 1971 and without taking prior permission of the Collector, the land in question was to be considered as a new tenure and

for committing the breach of the conditions the impugned order was passed by the Collector and that was confirmed by the Additional Chief Secretary. She has further submitted that since both the authorities have taken the concurrent view, this Court should not exercise its power under Article 227 of the Constitution of India.

9. I have heard the learned advocate Mr. Karia as well as Ms. Falguni Patel, the learned AGP appearing for the Government. I have also gone through the orders passed by both the authorities below and considered the submissions. It is an admitted position that the Collector has issued the notice only 3.6.1989/11.7.1989, and the transaction in question was taken place in 1971. The proceedings were initiated after the expiry of the period of about 18 years. Moreover, the facts narrated by the petitioner and submissions made before the authorities and also by way of reply to the show cause notice, were not considered by any of the authorities below and both the authorities have proceeded entirely on the erroneous premises. The relevant facts which had material bearing on the issues, to be taken into consideration were totally ignored and in this view of the matter, though the scope of power exercised under Article 227 of the Constitution by this Court is very limited, the Court can certainly interfere in the impugned orders passed by the authorities below so as to render justice to the aggrieved parties. Taking overall view of the matter, previous history of the case and late initiation of proceedings, this Court is of the view that the authorities below were not justified in passing the impugned orders and therefore both these orders are required to be quashed and set aside. Accordingly, both the orders are quashed and set aside with the direction to regularise the transaction, by imposing reasonable amount of premium of penalty, after giving proper opportunities to the petitioner. The authorities are, therefore, directed to consider the issue and regularise the transaction in question in accordance with law.

10. Subject to the above directions, the petition is allowed. Rule is made absolute to the above extent with no order as to costs.

rmr. [K.A. Puj, J.]